Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Petition of Cablevision Lightpath, Inc. For	)	WC Docket No. 07-12
Forbearance Under 47 U.S.C. § 160(c)	)	
From Title II and *Computer Inquiry Rules*	)	
With Respect to Broadband Services	)	

EMBARQ REPLY COMMENTS

Embarq[1] believes in reducing regulation wherever possible, and Embarq has no objection to Cablevision Lightpath, Inc. ("Lightpath") receiving the same forbearance granted to Verizon[2] and requested by Embarq.[3] Lightpath has not made the necessary showing, however, to receive the greater relief it seeks. Indeed, Lightpath's Petition for Forbearance ("Petition") is too

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[1] On May 17th, 2006, Sprint Nextel Corporation ("Sprint") transferred the Sprint Local Telephone Operating Companies, that were Sprint's incumbent local exchange carrier operations, by means of a stock dividend to shareholders and the creation of a new holding company, Embarq Corporation. The former Sprint Local Telephone Operating Companies are now subsidiaries of Embarq Corporation, are totally independent of Sprint, and are known as the Embarq Local Operating Companies. In addition to ILEC operations in 17 other States and wireless, long distance, and Information Service operations, Embarq is an ILEC in New Jersey and is currently receiving some traffic from Cablevision Lightpath.

[2] *See, Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services,* WC Docket No. 04-440, NEWS, *Verizon Telephone Companies Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services is granted by Operation of Law,* March 20, 2006, petitions for review pending, COMPTEL, 06-1113 (DC Cir, filed March 29, 2006) & Sprint Nextel, 06-1111, ("Verizon Forbearance Petition NEWS"); Letter from Edward Shakin, Vice President and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-440 (filed Feb. 7, 2006); and Letter from Susanne A. Guyer, Senior Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC WC Docket No. 04-440 (filed Feb. 17, 2006).

[3] *Petition of Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and Certain Title II Common-Carriage Requirements,* WC Docket no. 06-147 (filed July 26, 2006)("*Embarq Forbearance Petition*").

sweeping and, if granted, would harm the public interest. Most notably, Lightpath is seeking forbearance from all of Title II, including the pro-competitive provisions regarding interconnection, such as sections 201-02, and sections 251(a-b) for services that it admits are telecommunications services and not information services. Therefore, the Petition should be denied. If Cablevision were to limit its Petition to the relief sought by others, which is what it claims to want in the Petition, then Embarq agrees that relief would be appropriate.

At the outset, it must be noted that it is difficult to understand from the Petition why Lightpath is investing significant resources seeking forbearance; as a competitive local exchange carrier (CLEC) it faces much less regulation than do Verizon and Embarq. Lightpath itself points out in the Petition, it is already "entitled to a lesser degree of regulation than Verizon and the other ILECs who have filed petitions." and, as a competitive provider, "Lightpath is already free from most economic regulation and is not subject to tariff requirements …."[4]

More troubling though than this uncertainty as to why Lightpath requires regulatory relief for largely unregulated services, is the scope of the relief requested – apparently forbearance from *all* of Title II. This is far more reaching than the relief requested in the *Embarq Forbearance Petition* (which petition is referenced by Lightpath in its *Petition.*) Rather, the *Embarq Forbearance Petition* is very specific and, interestingly, limited to relief from obligations to which Lightpath is not even subject:

> Specifically, Embarq seeks relief from the mandatory application of Title II requirements regarding tariffs, prices, cost support, price caps and price flex in order to have the flexibility to provide the broadband services at issue on a common-carriage or private-carriage basis ….[5]

[4] Petition at pp. 2 & 6.
[5] *Id.*, p. 2.

By failing to limit or tailor its request appropriately, Lightpath's Petition also fails to demonstrate the elements necessary for the Section 10(c) forbearance tests to be met.[6] As the New Jersey Rate Counsel points out:

> If the petition is granted, Lightpath would no longer be required under Title II to "establish physical connection with other carriers" and do so in a just, reasonable, and nondiscriminatory manner. [Citing 47 U.S. C. §§ 201(a) and 202(a).] The elimination of Lightpath's obligation to connect its facilities with other carriers who provide competing broadband services and the Lightpath's propensity to discriminate against carriers violates the first prong of the forbearance test. [Enforcement of a regulation is not necessary to ensure just and reasonable charges, practices, or classifications by, for, or in connection with the telecommunications carrier or service, *see* 47 U.S.C. §160(a)(1).] The forbearance petitions also violate the second prong of the forbearance test which requires a petitioner to demonstrate that enforcement of the specific regulation is not necessary for the protection of consumers.[7]

Lightpath's Petition also implicates the similar obligation in Section 251(a)[8] of all carriers to interconnect with any other carrier. Relief from these interconnection obligations fails the third, or public interest, prong of the forbearance test. It can permit a carrier to "dump" traffic on the network by refusing to enter interconnection agreements with most carriers while handing traffic to one carrier for the purpose of exchanging traffic with those other carriers. This ability to "hide" leads to "phantom traffic" where the terminating carriers are unable to bill for appropriate intercarrier compensation. Clearly, forbearance is not in the public interest where it makes it easier for carriers to send phantom traffic, and thus avoid paying lawful intercarrier compensation to terminating carriers for the use of their networks.[9]

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[6] 47 U.S.C. § 160(c).
[7] Comments of the New Jersey Division of Rate Counsel, pp. 3-4 (filed February 9, 2007.)
[8] 47 U.S.C. § 251(a).
[9] Not only must the Commission deny forbearance from 251(a), but additionally the Commission may go farther to stop the pervasive problem that is known as phantom traffic. As the Missoula Supporters argued in the Intercarrier Compensation proceeding: "Unless the Commission

Finally, Embarq notes that in the *Embarq Forbearance Petition,* Embarq went a step further than identifying the specific Title II obligation from which relief was sought. To eliminate any doubt or confusion, Embarq also specifically disclaimed seeking any relief with regard to two critical Title II public interest obligations – Section 226[10] CALEA obligations and Section 254[11] USF obligations.[12] Indeed, it was less than a year ago that the Commission determined that it was in the public interest to impose CALEA obligations on facilities-based broadband internet access providers and there has been no justification set forth to change that finding with regard to the broadband services, including "Ethernet services (...Internet/Voice Bundle)"[13] of Lightpath.

For all of the above reasons, Lightpath's Petition, as currently set forth in the record, must be denied for failure to meet the three-prong forbearance test of Section 160(c). However, if the Petition was limited to specific Title II obligations that would not pose threats to the public interest, to consumers, and to competition, Embarq would support the Petition. As Embarq argued in the *Embarq Forbearance Petition*, the broadband market is robustly competitive so dominant carrier regulation is not only unnecessary but also harmful.

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similarly clarifies that ILECs may request interconnection from CLECs and invoke the negotiation and arbitration provisions of section 252, ILECs will have no ability to bring CLECs to the negotiating table. [Citation omitted.] .... The same finding that the Commission made in the *T-Mobile Order* with respect to ILECs and CMRS carriers – determining that it was necessary to ensure that ILECs have the ability to compel negotiations and arbitrations – applies with equal force to ILEC-CLEC relationships and this request finds support among ILECs and CLECs. [Citation omitted.]" Reply Comments of the Supporters of the Missoula Plan on their Phantom Traffic Proposal, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, filed January 5, 2007, p. 27.

[10] 47 U.S.C. § 226.

[11] 47 U.S. C. § 254.

[12] *Embarq Forbearance Petition* at p. 2.

[13] Petition at p. 2.

Most regulation—including those parts of Title II from which Embarq has sought forbearance—is not needed to protect consumer because the competitive market-place will provide the necessary protection. Further, regulatory forbearance—from the appropriate obligations--will foster investment and build-out, leading to reduced prices and new and innovative services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Embarq Reply Comments in WC Docket No. 07-12 was sent by First Class Mail, postage prepaid, and/or electronic mail on this the 23rd day of March, 2007 as follows:

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